IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 12345 of 2004

Between:

1 Dr. Rajasekhar S/o late K. Venkatram Reddy
R/o Room No.3, House Surgeons Quarters, Osmania General Hospital, Hyderabad
2 Dr. Yujwal Raj S/o Smt. Y. Rajayalakshmi Devi
R/o 12-2-417/55, Sarada Nagar Colony, Mehdipatnam

..... PETITIONER(S)

AND

1 Government of Andhra Pradesh, rep by Principal Secretary, Medical & Health Department, A.P., Secretariat, Hyderabad
2 Indian Medical Council rep by Secretary, Alwan-E-Galib Marg
Kotla Road, Opp Mata Sundari College (For Women) New Delhi-110 002
3 NTR University of Health Science, Vijayawada rep by Registrar
4 Medicare Educational Trust, Urus Village of Warangal District, rep.by its Original & Founder Trustee,
Smt T.Laxmi Rama Devi, W/o T.Narsinga Reddy, R/o Hanamkonda, Warangal District
(R4 is impleaded as per Court Order dated 28/7/2004 in WPMP 16773/2004)

5. M/a Bhagwan Mahavir Memorial Trust, 10-1-1, Mahavir, AC Guards, Hyderabad – 500 004 represented by its Chairman, Shantilal Dhaga, s/o Sri Jethmal Dhaga, aged about 56 years, r/o Hyderabad.

6. Mahammadia Educational Society, Cuddapah, Door No.20/520, Medchal Road, Cuddapah, represented by its Secretary Dr N.Mahammed Amir, s/o N.Abdul Gaffar, aged 53 years, r/o door No.20/520, Medchal Road, Cuddapah

(respondent No.4 is impleaded as per Court dated 28-7-2004 in WPMP.No.16773 of 2004).

(Respondent Nos.5 and 6 are impleaded as per Court order dated 4-9-2004 in W.P.M.P.SR.No.17658 and 20435 of 2004).

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction more particularly one in the nature of Writ of mandamus declaring the action of the A.P., state Government in not implementing the recommendations of the Hon'ble Justice B.P. Jeevan Reddy committee and taking steps for cancellation of the Essentiality Certificates granted to the Colleges identified by the Committee including 1) Shafa Education Society, Nandyal; 2) Bhagwan Mahavir Memorial Institute, Vikarabad; 3) Medwin Educational Society, Sankarapally; 4) Aditya Educational Society, Srikakulam 5) Mahammadiya Educational Society, Cuddapah; 6) CSL Arogyavaram Medical Centre, Arogyavaram, Chittoor; 7) Medicare Educational Trust-URS Village, Warangal: 8) Mother Teresa Education Society-Amalapuram, East Godavari district 9) Tesla Medical Education & Research Academy Adilabad; 10) Joginpally BR Educational Society, Yenkapally, Moshabad, RR District; 11) Shadan Educational Society, Peerancheru RR District etc., as arbitrary, illegal and violative of Articles 14, 16 of the Constitution of India and the provisions of Indian Medical Council Act and Consequently direct the Government to take steps forthwith for implementation of the recommendation of the Hon'ble Justice B.P. Jeevan Reddy Committee to uphold the standards of Medical education

Counsel for the Petitioner: MR.S.SHARAT KUMAR

Counsel for the Respondent 1: The Advocate General

Counsel for respondent No.2 : Mr S.Niranjan Reddy

Counsel for respondent No.3 : Dr. Y.Padmavathi

Counsel for respondent No.4 : Mr T.Hanumantha Reddy

Counsel for respondent No.5 : Mr G.Vidya Sagar

Counsel for respondent No.6 : Mr B.Narrayan Reddy

The Court made the following ORDER:

(per Hon’ble Sri Devinder Gupta, the Chief Justice)

Writ petition filed by a practising Advocate of the High Court as ‘public interest litigation’ about the on-going strike by the junior doctors working in various Government Hospitals of the State was entertained. He had sought direction to declare the strike organized by the Andhra Pradesh Junior Doctors’ Association Joint Action Committee represented by its Chairman and its members as illegal and alternatively to direct the State Government and the N.T.R. University of Medical and

Health Sciences to pass appropriate orders prohibiting continuance of the strike and to pass such other orders as may be deemed fit. The writ petition ultimately was disposed of by a Division Bench of this Court on 27.1.2004 with certain directions. With consent of parties a broad based committee was constituted headed by Sri Justice B.P. Jeevan Reddy, retired Judge of Supreme Court of India to consider and examine sixteen issues mentioned in the charter of demands submitted by the Junior Doctors' Association to the Government. The Committee was requested to hear the concerned parties and submit its recommendations to the Government. On receipt of the Committee's report, the Government was required to take appropriate decision. Liberty was reserved to the Junior Doctors' Association in the event of the Association feeling aggrieved by the decision to be taken by the Government to take appropriate steps for redressal of their grievance only in according with law and not by resorting to strike.

2. It is not in dispute that on 7.6.2004, the Committee submitted its report to the Government.

3. On 13.7.2004 this petition filed as 'public interest litigation' by Dr. Rajasekhar and Dr. Yujwal Raj, two student house surgeons, seeking a writ to declare the action of the State Government in not implementing the recommendations of the Committee and in not taking steps for cancellation of the essentiality certificates granted to the colleges identified by the Committee, including eleven colleges referred to in the petition, as arbitrary and illegal and sought direction to the Government to forthwith implement the recommendations to uphold the standards of medical education. Petitioner No. 1 is the President of the A.P. House Surgeons Association, whereas petitioner No. 2 is the Secretary of the said Association. They claim that the Junior Doctors' Association has locus standi to question the Government's decision to sanction private medical and dental colleges in the State of Andhra Pradesh. Despite the fact that Hon'ble Sri Justice B.P. Jeevan Reddy's Committee had submitted its report to the Government and they had appealed to the Government to take further steps in the matter with regard to cancellation of the essentiality certificates granted to about fifteen colleges, which have not started their respective institutions and flagrantly violated the Medical Council of India's norms, the State Government has not taken any action.

4. The precise grievance when the writ petition was filed was to G.O.Ms.Nos. 184 and 185 dated 30.6.2004 issued by the State Government formulating rules for

admission to the private unaided medical colleges and also to the minority educational institutions and from this act of the Government in issuing G.Os an impression is gathered that the Government is not in a mood to implement the recommendations of the Committee. They also alleged that the Medical Council of India in its circular dated 28.5.2004 had issued schedule for conduct of counseling for admission into medical courses for the academic year 2004-2005 and the counseling in Andhra Pradesh was scheduled to begin on 17.7.2004. The Government had not taken any steps or revealed its mind with regard to allotment of students to fifteen medical colleges identified by the Committee for cancellation of essentiality certificates as to whether students would or would not be allotted to the institutions. Thus, the petitioners felt that there was inaction on the part of the Government or in other words they felt that the Government had no intention to implement the recommendations. Thus, they sought the reliefs prayed for.

5 . On 19.7.2004 the writ petition came up for consideration. Learned Standing Counsel for the respondent/University stated that as per her instructions, the eleven institutions named by the petitioners had not been given permission by the Central Government and, therefore, those institutions cannot be permitted to admit students for the academic session 2004-2005. For want of relevant information from the State Government and the University, the case was adjourned and on 28.7.2004 the learned Advocate General furnished a list of medical colleges which had not yet been established, which included twelve educational institutions. Time was allowed to the State Government to file affidavit. Affidavit thereafter was filed by Sri S. Bhale Rao, Principal Secretary to Government, Health, Medical and Family Welfare Department placing on record the action taken by the State Government on sixteen issues, which were before the Committee.

6. We are not concerned in this petition on the merits of the other recommendations of the Committee. The recommendation of the Committee, which is the subject matter of the present writ petition, is about those cases where a college has not been established within two years period specified in the essentiality certificate, that essentiality certificate must be cancelled forthwith in accordance with the principles of natural justice and in case where no time is prescribed in the essentiality certificate for establishing the college, the Government should ascertain whether the applicant has established the college within reasonable time after obtaining the essentiality certificate and if he is found to have

failed to establish, the Government was directed to proceed to cancel the same in accordance with the principles of natural justice. This recommendation is a part of various recommendations and is followed by another recommendation that it would be appropriate that the Government undertakes overall review of the issue concerning establishment of private medical colleges and if it is found that there was need for more colleges in the State, it should grant essentiality certificate acting strictly in accordance with the procedure contemplated by Form II prescribed by the regulations. Submission of the association that existing medical colleges were more than adequate and that there was no need for more colleges was considered and was turned down observing that it is a matter for the Government to decide and not the association.

7. Affidavit of the State Government on this aspect, which is the subject matter of the present writ petition, states that vide G.O.Ms.No. 69 dated 23.2.2004 a monitoring Committee had already been set up to inspect colleges particularly those for whom essentiality certificates were given. After the said Committee was constituted two of its members had submitted their resignation, therefore, the Committee had to be constituted keeping in view the recommendations of Sri Justice B.P. Jeevan Reddy Committee and the Government proposes to set up a Committee vested with adequate powers to discharge its duties efficiently, including the power of inspection, surprise inspection, etc. Constitution of committee is under process and the Government also proposes to make a comprehensive policy of review on various issues involved concerning establishment of private medical and dental colleges in the State. In the affidavit, detailed particulars of twelve medical and dental colleges are furnished to whom essentiality certificates were granted and are not functioning and also the action taken against each one of such institution. In most of the cases, remarks column suggests that show cause notice had been issued to such institutions, explanation had been received and in some of the cases certain remarks or report of the Committee are awaited.

8. Learned counsel for the petitioners submitted that the information placed on record by the Government does not amount to compliance of the Committee's recommendations. The Committee required show cause notices to be issued and to cancel the essentiality certificates of the offending colleges. As per details furnished by respondents but in all the cases, show cause notices were issued prior to

submission of the report by the Justice B.P. Jeevan Reddy Committee.

9. This submission of the learned counsel for the petitioners has no force inasmuch the recommendation by the Committee to the Government is to take action in proceeding to cancel the essentiality certificate after complying with the principles of natural justice. In case, the Government had already initiated action by issuing show cause notices prior to the receipt of the recommendation of the Committee, such show cause notice will not get nullified. Continuing to take action thereupon will amount to complying with the recommendation of the Committee. The Committee did not fix any time limit within which ultimate decision has to be taken by the State Government. Learned counsel for the petitioners highlighted the action taken report as regards Bhagwan Mahaveer Educational Institution, Vikarabad. The affidavit in reply states that based upon the recommendations of the periodical inspection Committee, essentiality certificate issued to the society has been revalidated, but the entire issue has to be placed before the Committee to be constituted as per the report of the Justice B.P. Jeevan Reddy Committee. Learned counsel for the petitioners submitted that revalidating the essentiality certificate amounts to violating the recommendations of the Justice B.P. Jeevan Reddy Committee. We are not impressed with such a submission made on behalf of the petitioners. The recommendation of the Justice B.P. Jeevan Reddy Committee was to take action against those institutions, which have not complied with the conditions of the essentiality certificate. Recommendation nowhere limits the authority or jurisdiction of the Government in not passing appropriate orders either revalidating the certificate or granting more time, considering the facts and circumstances of each case. Action has to be taken after show cause notices have been issued but it is not necessary that the action to be taken would result only in cancellation of essentiality certificate. Recommendation of the Committee has to be understood in wider perspective that the Government should not ignore and overlook the non-compliance of the conditions of the essentiality certificate; rather it enjoined upon the Government to take action in the matter.

10. The entire purpose of filing the writ petition, as we have been able to understand on the basis of the averments made therein, was that the institutions identified by the Justice B.P. Jeevan Reddy Committee should not be allotted any students by the University of Health Sciences and it is the categorical stand of the University that none of the institutions have been permitted to admit students and the

affidavit of the State Government says that the institutions are not functioning.

11. We do not find, from what we have stated above, that there is any inaction on the part of the Government in so far as the subject matter of the present writ petition is concerned and would dismiss the writ petition.

September, 2004.

Sarfraz

1. Principal Secretary to Government of A.P., Medical & Health Department, A.P. Secretariat, Hyderabad.
2. The Secretary, Indian Medical Council, Alwan E Galib Marg, Kotla Road, Opp: Mata Sundari College (for women), New Delhi – 110 002.
3. The Registrar, NTR University of Health Sciences, Vijayawada.
4. Two CCs to the Advocate General, High Court of A.P., Hyderabad.
5. The Chairman, Bhagwan Mahavir Trust, 10-1-1, Mahavir Marg, AC Guards, Hyderabad – 500 004.
6. The founder Trustee, Medical Education Trust, Urus village, Warangal district.
7. The Secretary, Mahammadia Educational Socielty, Cuddapah, Door No.20/520, Medchal Road, Cuddapah.
8. Two CD copies.